

## Internal Revenue Service

## Department of the Treasury

Washington, DC 20224

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Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PA:B03

PLR-112741-08

Date:

August 06, 2008

Date of Death: Date A

### Legend

Decedent	=
Date A	=
Date B	=
State	=
LLC X	=
Company Y	=
Real	=
Property A	
Real	=
Property B	
Real	=
Property C	
A%	=
B%	=
C%	=
\$D	=
\$E	=
POA	=

Dear :

This letter is in response to your request for a private letter ruling, dated March 10, 2008, concerning whether Decedent's A% interest in LLC X qualifies as an interest in a closely held business for the purposes of section 6166 of the Internal Revenue Code.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

## Facts

Decedent died on Date A, a citizen of the United States and a resident of State. Decedent's Estate timely filed an extension of time to file the estate tax return, which included a request for an extension of payments under section 6166. The section 6166 election requested to pay the tax in 10 annual installments beginning on the date five years after the original due date for payment of the tax, or Date B.

At the time of her death, decedent was the sole shareholder of LLC X, which is included in full in determining decedent's gross estate. LLC X owned: a B% tenant in common interest in Real Property A and Real Property B, a C% tenant in common interest in Real Property C, cash, securities, and an automobile. As of Decedent's date of death, the amount of cash held was \$D, and the value of the securities was \$E .

Company Y is the co-owner of Real Properties A and B. Company Y initially purchased the properties and then sold the tenant in common interests to LLC X. The relationship between LLC X and Company Y was limited to the co-ownership of the properties. There were no written agreements between LLC X and Company Y; however, the working verbal agreement was that Decedent, through LLC X, would manage the properties. Company Y played no role in the management of the properties.

LLC X was responsible for all aspects of management of Real Properties A and B. Each property had resident managers as required by State law. Decedent was a full-time employee of LLC X, and the resident managers were agents of LLC X.

Decedent handled all aspects of day to day management of Real Properties A and B, including: setting rental rates and lease terms; review of rental applications; lease execution; rent collections; lease terminations; authorization of repairs; building and grounds maintenance; and hiring contractors and overseeing work. LLC X reimbursed Decedent for rent for her home office where she maintained regular business hours for management of the properties.

Resident managers provided 24-hour office access for tenants. Resident managers received compensation in the form of reduced rent.

Subsequent to Decedent's death, Decedent's estate and Company Y hired a management company to manage properties A and B.

LLC X also owned an automobile used by Decedent in her capacity as manager of the company and Real Properties A and B. Automobile expenses were deducted by LLC X, and the estate claims the automobile was used predominantly in the business. No supporting documentation or additional information was provided regarding the use of the automobile.

Neither Decedent nor LLC X provided any management services with respect to Real Property C.

No information regarding whether the cash or securities were used for business purposes was provided.

#### Ruling Requested

On the basis of the above facts and representations, the estate has requested a ruling that decedent's interest in LLC X qualifies as an interest in a closely held business within the meaning of section 6166(b)(1) and is not a passive asset within the meaning of section (b)(9).

#### Relevant Authorities

Under section 6166(a), if the value of an interest in a closely held business included in determining the gross estate of a decedent exceeds 35 percent of the adjusted gross estate, the executor of the estate may elect to pay part or all of the tax imposed by section 2001 (estate tax) in two or more (but not exceeding ten) equal installments. To qualify for a section 6166 election, the decedent must have been a citizen or resident of the United States at the date of death. The maximum amount of tax which may be deferred is the percentage of estate tax equal to the percentage of the adjusted gross estate that is comprised of the closely held business amount.

Section 6166(b)(1) of the Code provides in part that the term "interest in a closely held business" means:

- (C) stock in a corporation carrying on a trade or business if-
  - (i) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or
  - (ii) such corporation had 45 or fewer shareholders.

The determination under section 6166(b)(1) shall be made as of the time immediately before the decedent's death. I.R.C. § 6166(b)(2)(A).

Section 6166(b)(9)(A) provides that for purposes of section 6166(a)(1) and in determining the closely held business amount, the value of any interest in a closely held business shall not include the value of the portion of such interest which is attributable to passive assets held by the business. Section 6166(b)(9)(B)(i) provides that "passive

asset" means, in general, any asset other than an asset used in carrying on a trade or business.

Under section 6166(d), the election to defer payment of tax under section 6166 must be made no later than the time prescribed by section 6075(a) for filing the estate tax return, e.g., nine months after the date of the decedent's death.

Rev. Rul. 2006-34, 2006-1 C.B. 1171, provides a non-exclusive list of factors that are likely to be relevant in determining whether activities with regard to real property support a finding that the real property interest constitutes a closely held business interest for purposes of section 6166 of the Code.

### Analysis

Section 6166 was enacted to permit the deferral of the federal estate tax where, in order to pay the tax at one time, it would be necessary to sell assets used in an active business, and thereby, disrupt or destroy the business enterprise. Congress intended to permit deferral of tax on property used in an active business but not on property held as a passive investment.

The type and level of the activity carried on by a proprietorship, partnership, or corporation must be examined to distinguish an active trade or business under section 6166 from the mere management of investment assets. In determining the level of activity, the activities of agents and employees are taken into account. See Rev. Rul. 2006-34.

Thus, to determine whether LLC X was carrying on a trade or business for purposes of section 6166, the nature and level of the activities of the LLC, acting through its employees and agents, must be evaluated.

The activities performed by the employees and agents of LLC X with respect to Real Properties A and B went beyond the typical activities associated with merely managing investment assets such as collecting rents, making mortgage payments, and making necessary repairs. LLC X was not a passive owner of income producing assets, but rather was a company running a real estate rental operation. Thus, LLC X, up until Decedent's death, operated an active rental business with respect to Real Properties A and B.

LLC X owned an automobile used by Decedent in her capacity as manager of the company and Real Properties A and B. Automobile expenses were deducted by LLC X. While the estate claims the automobile was used predominantly in the business, no explanation or additional information regarding that statement was provided. Even though LLC X held title to the vehicle and it was predominantly used in management activities, the use of the vehicle in part for non-business purposes limits the value of the

asset for purposes of section 6166. Insufficient information has been provided to determine whether all or only part of the value of the automobile is an asset used in the trade or business.

LLC X owned a C% tenant in common interest in Real Property C. Neither Decedent nor LLC X provided any management services with respect to Real Property C. Based on the information provided, Real Property C was a passive asset of LLC X.

No information beyond value was provided regarding the cash and securities held by LLC X. No ruling was requested or is given as to whether any amount of cash or securities should not be considered a passive asset.

Pursuant to Rev. Proc. 2008-3, IRB 2008-1, Section 4.02(1), the Service will ordinarily not rule on any matter in which the determination requested is primarily one of fact, e.g., market value of property. Therefore, we decline to rule as to: 1) the value of LLC X or any of the individual assets held by the company; and 2) the percentage of the adjusted gross estate comprised of the closely held business as defined by sections 6166(a)(1), (b)(5), and (b)(9). Accordingly, we cannot issue a ruling as to the amount of the installment payments.

## Conclusions

Based on the facts and information submitted and the representations set forth above, we rule as requested with respect to the following:

1. The value of Decedent's interest in LLC X attributable to Real Properties A and B qualifies as an interest in a closely held business for purposes of section 6166. Accordingly, provided the other section 6166 requirements are met, payment of the amount of estate tax attributable to the non-passive assets (Real Properties A and B) of the LLC may be paid in installments under section 6166.
2. The federal estate tax attributable to the value of Real Property C may not be paid in installments because it is a passive asset.

No opinion is expressed in this ruling as to the eligibility for installment payments of the estate tax attributable to the cash, securities, or automobile.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Mitchel S. Hyman  
Senior Technician Reviewer, Branch 3  
(Procedure & Administration)

cc: